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November 6, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: General Docket No. 90-314 and ET Docket No. 92-100

Dear Ms. Searcy:

Enclosed for filing please find an original plus eleven (11) copies of the Comments of Rochester Telephone Corporation in this proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Downtown Copy Center

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Amendment of the Commission's Rules To Establish New Personal Communications Services	General Docket No. 90-314 ET Docket No. 92-100

COMMENTS OF ROCHESTER
TELEPHONE CORPORATION

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COMMENTS OF ROCHESTER
TELEPHONE CORPORATION

Introduction and Summary

Rochester Telephone Corporation ("Rochester"), on its behalf and that of its exchange carrier and cellular subsidiaries, submits these comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding.[1/] In adopting the NPRM, the Commission is seeking to establish a set of rules and procedures that will permit the deployment of new and innovative personal communications

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1/ Amendment of the Commission's Rules To Establish New Personal Communications Services, Gen. Dkt. 90-314, ET Dkt. 92-100, Notice of Proposed Rule Making and Tentative Decision, FCC 92-333 (released Aug. 14, 1992) ("NPRM").

services ("PCS") in an efficient and expeditious manner.[2/] The Commission's goals are laudable and, in general, the various proposals contained in the NPRM represent reasonable means of accomplishing those goals. In these comments, Rochester proposes that the Commission adapt certain of the concepts advanced in the NPRM in order better to achieve its goals. Rochester's proposals encompass four broad areas: (1) licensee qualifications; (2) market structure and the role of regulation; (3) processing of applications; and (4) interconnection obligations.

First, the Commission should decline to adopt its proposal to disqualify current cellular licensees and their affiliates from holding PCS licenses in areas in which they provide cellular service.[3/] Such a rule would unnecessarily disqualify many providers that could be among the most efficient PCS providers. Such a result would not serve the

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2/ In a related proceeding, the Commission has decided to allocate specific blocks of spectrum to PCS that are consistent with the spectrum allocation proposed in the NPRM (Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies, ET Dkt. 92-9, First Report and Order and Further Notice of Proposed Rulemaking, FCC 92-437 (released Oct. 16, 1992)) and has proposed procedures for relocating incumbent licenses -- principally common carrier and private fixed microwave users -- to alternative frequencies. Id., Further Notice of Proposed Rulemaking, FCC 92-357 (released Sept. 4, 1992).

3/ NPRM, ¶ 67.

public interest. Moreover, the proposed disqualification is not necessary to protect any competitive interest. The Commission is proposing to license multiple PCS providers in a given market -- and Rochester is proposing that the Commission license more providers than the number proposed in the NPRM. Under these circumstances, there is virtually no danger that the joint provision of cellular service and PCS could pose any anticompetitive potential.

In addition, although the Commission does not directly propose to disqualify exchange carriers from holding PCS licenses, its proposed cellular disbarment would have precisely this effect, as the Commission acknowledges.[4/] As with cellular providers, exchange carriers likely will be among the most efficient PCS providers. Competitive considerations cannot justify such an arbitrary result. Thus, the Commission should conclude that all qualified applicants will be eligible to hold PCS licenses.

Second, the Commission is proposing that it license three applicants per area and requests comment on whether the geographic scope of a PCS license should be national, based upon the Rand-McNally Major Trading Area ("MTA") or Basic Trading Area ("BTA") definitions, the telephone LATAs or some

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4/ Id., ¶¶ 74-76.

combination thereof.[5/] Instead,the Commission should allocate 20 MHz of spectrum each to five licensees per area and make the geographic scope of PCS licenses coterminous with the cellular Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs").

In addition, the Commission should define all licensed PCS operations as common carriage. Defining licensed PCS operations as common carriage will help ensure competitive equity among all service providers. Because wireless technologies will increasingly be used by all telecommunications service providers, it is essential that they all operate under the same set of rules. Moreover, at this time, the Commission should not preempt state regulation of PCS providers. Absent experience, the Commission cannot craft a preemption order sufficiently precise to withstand judicial scrutiny.[6/] The Commission, however, should make clear that it will preempt specific state regulatory schemes that threaten to frustrate valid federal policy objectives.

5/ Id., ¶ 60.

In addition, the Commission proposes to allocate three MHz in the 900 MHz range for narrowband PCS operations and twenty MHz in the 2 GHz range for unlicensed operations. Id., ¶¶ 43, 49. Rochester has no objection to any of the Commission's alternatives for allocating these blocks of spectrum.

6/ See, e.g., National Association of Regulatory Utility Comm'rs v. FCC, 880 F.2d 422 (D.C. Cir. 1989) ("NARUC").

Third, to the extent possible, the Commission should utilize auctions to allocate spectrum. Auctions represent the most economically efficient means of allocating this scarce resource. Rochester understands that the Commission does not have the statutory authority, at present, to conduct auctions. As an alternative, the Commission should utilize comparative hearings, along the lines that the Commission recently adopted for governing the forthcoming cellular renewal proceedings.[7/] Although the comparative hearing process may well be burdensome and expensive, it is far preferable to the remaining alternative -- lotteries. As the Commission has recognized,[8/] the lottery process is an open invitation to speculative abuse. Nonetheless, if the Commission believes that it must resort to lotteries, it should reject its proposed "postcard" lottery concept and substitute lotteries based upon stringent showings of financial and technical qualifications.

7/ Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Cellular Radio Telecommunications Service, CC Dkt. 90-358, Report and Order, FCC 91-400 (released Jan. 9, 1992) ("License Renewal Order").

8/ E.g., Amendment of Part 22 of the Commission's Rules To Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules, CC Dkt. 90-6, Further Notice of Proposed Rulemaking, FCC 91-311, ¶ 23 (released Oct. 18, 1991). See also License Renewal Order, ¶ 33.

The Commission must also establish reasonable post-award requirements and stiff penalties for failure to comply therewith, together with rules for processing unserved areas applications.

Fourth, the Commission should adopt interconnection standards that are based upon both standards of technical and economical feasibility and reciprocity. While the Commission correctly concludes[9/] that it should extend to PCS providers the right to interconnect to the public switched network,[10/] this proposal does not go far enough. The Commission should also adopt policies that encourage interoperability of different PCS systems -- through the adoption of common air interfaces -- and should recognize a right of landline and cellular companies to interconnect with PCS systems. By adopting a policy recognizing reciprocal rights of interconnection, the Commission will facilitate the broadest possible interconnectivity which will be essential to facilitating the seamless operation of all communications networks in the evolving "network of networks."

9/ NPRM, ¶ 99

10/ See, e.g., Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd. 2910 (1987).

Argument

I. THE COMMISSION SHOULD PERMIT ALL FINANCIALLY AND TECHNICALLY QUALIFIED ENTITIES TO HOLD PCS LICENSES.

The Commission has proposed a somewhat self-contradictory standard for determining to which entities it will award PCS licenses. On the one hand, the Commission intends to permit local exchange carriers to qualify for PCS licenses.[11/] On the other hand, it proposes to exclude existing cellular companies and their affiliates from holding such licenses.[12/] The latter proposal effectively negates the former. Most, if not all, large and mid-size exchange carriers (and many smaller ones) own interests in cellular companies that provide service within their respective telephone service territories. The Commission's proposed disqualification would effectively preclude exchange carriers that serve the overwhelming majority of the nation's access lines from holding PCS licenses. Such a result would squarely contradict the Commission's tentative conclusion that the public will benefit if exchange carriers are permitted to hold PCS licenses.[13/]

In its place, the Commission should adopt a policy permitting all financially and technically qualified entities

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11/ NPRM, ¶¶ 73-76.

12/ Id., ¶ 67.

13/ Id., ¶ 75.

to qualify for PCS licenses. There is no valid reason for excluding either local exchange carriers or cellular companies from holding PCS licenses. As the Commission recognizes,[14/] there likely are economies of scope that could be realized from the joint provision of PCS services and both cellular and local exchange services. This conclusion recognizes the dual nature of PCS services -- they are both substitutable for and complimentary to local exchange and cellular services. To the extent that PCS and cellular and local exchange services are complimentary, the proposed disqualification standard would effectively negate the consumer benefits that would accrue from the realization of those efficiencies.[15/]

Moreover, as technology evolves, PCS could (and probably will) become directly substitutable for services traditionally provided by local exchange carriers and cellular providers.

14/ Id., ¶¶ 66, 75.

15/ The Commission also requests comment on whether it should eliminate the cellular separate subsidiary requirement (47 C.F.R. § 22.901(b)) currently applicable to the cellular operations of the Bell companies. NPRM, ¶ 76. Although, in many cases, it will make sense for companies to continue to conduct their cellular businesses separately from their local exchange operations, that decision should be a matter of business judgment rather than of regulatory fiat. In addition, the current rules may also inhibit other forms of collaborative conduct -- short of full integration -- between Bell company cellular and local exchange operations that could benefit consumers. On this basis, the Commission should rescind this rule.

The Commission should not artificially limit the ability of local exchange and cellular companies to offer their services utilizing those technologies that are best suited to particular applications. The Commission has consistently recognized that artificial constraints on the ability of incumbent providers to utilize new technologies to offer their services ill serves the public interest.16/

Precluding exchange carriers and cellular companies from holding PCS licenses would effectively remove companies that could well be the most efficient PCS providers. These companies have enormous experience in offering communications services to the public. If permitted to participate in the provision of PCS, the Commission may expect exchange carriers and cellular providers to be effective competitors in the provision, not only of their traditional services, but also of new and innovative services.

16/ For example, the Commission has allocated spectrum for the provision of Basic Exchange Telephone Radio Service ("BETRS"). A BETRS license permits a rural local exchange company to utilize wireless technology as a substitute for local wireline loops that would be extremely expensive to deploy and maintain. Indeed, BETRS is simply one form of PCS. Similarly, the Commission has permitted cellular providers to utilize their assigned frequencies to offer services ancillary to cellular service. Amendment of Parts 2 and 22 of the Commission's Rules To Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Cellular Radio Telecommunications Services, Report and Order, 3 FCC Rcd. 7033 (1988).

Finally, there is no valid competitive justification for precluding exchange carriers or cellular providers from holding PCS licenses. Even were the Commission to view exchange, cellular and PCS as discrete markets -- a view that would be demonstrably incorrect -- any perceived potential for anticompetitive conduct would not justify a disqualification. The Commission may address any residual concerns through nonstructural safeguards and appropriately applied interconnection policies.

All three businesses are -- or, in the case of PCS, will be -- subject to substantial competition. Therefore, market forces will prevent exchange carriers or cellular providers from engaging in anticompetitive conduct. Cellular service is currently intensely competitive. The Commission's decisions to license two cellular providers in each market and to permit the resale of cellular service has generated substantial competition in this business.

Similarly, local exchange carriers face significant competition. Interexchange carriers currently offer customers attractive service options that reduce or eliminate the role of exchange carriers in serving those customers. Competitive access providers now compete directly with exchange carriers in offering transport and other services. Cable companies are poised to offer local distribution alternatives to exchange carriers' landline services. The Commission is also proposing

to license multiple PCS providers in the markets it ultimately decides to establish.[17/]

Under these circumstances, all providers will have alternatives in the event that one of the participants attempts to engage in anticompetitive behavior. Such behavior would be self-defeating and, thus, no market participant could be expected to engage in it.

The Commission may address any residual concerns through appropriate nonstructural safeguards and interconnection standards. Accounting safeguards can ensure that PCS operations are not subsidized with revenues from other services. Similarly, interconnection requirements will ensure that all PCS providers will be able to interconnect with landline and cellular networks in the same manner as their competitors, thus negating any competitive advantage that could otherwise accrue from discriminatory interconnection policies.[18/] The adoption of such safeguards will effectively

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17/ NPRM, ¶ 34.

18/ In this regard, the Commission should apply any safeguards that it adopts to all market participants. Because exchange and cellular services are competitive today, there is no reason to burden these companies' PCS operations with regulatory requirements not applicable to their competitors. Moreover, certain potential competitors, such as cable television companies for whom PCS is likely to be highly attractive, have a greater ability to discriminate and cross-subsidize than do exchange carriers or cellular providers.

preclude anticompetitive conduct. At the same time, consumers will be able to benefit from the economies of scope inherent in the provision of exchange and cellular services and PCS.

II. THE COMMISSION SHOULD ADOPT A LICENSING PLAN THAT ACCOMMODATES GROWING PUBLIC DEMAND FOR PCS.

The Commission has identified three essential elements of any licensing regime for PCS: (1) number of licenses; (2) geographic area to be covered by a license; and (3) the regulatory treatment of PCS providers. In the NPRM, the Commission proposes to award three licenses, with an allocation of 30 MHz each, per area.[19/] It tentatively rejects the use of MSAs and RSAs as the basis for determining the geographic area covered by a license and requests comment on whether it should utilize the telephone LATAs, the Rand-McNally MTA or BTA concepts or some other geographic determinant. The Commission also requests comment on whether it should award licenses that are nationwide in scope.[20/] Finally, the Commission requests comment on whether it should classify PCS as common or private carriage and the degree to which it should preempt state regulation of PCS providers.[21/]

19/ Id.

20/ Id., ¶ 60.

21/ Id., ¶¶ 94, 97.

The Commission should adopt a licensing plan that best meets the growing demand for PCS and recognizes its essentially local and common carriage nature. Toward this end, the Commission should award five licenses, with an allocation of 20 MHz each, per area. The Commission should also define the geographic scope of PCS licenses as coterminous with the cellular MSAs and RSAs. It should recognize PCS as common carriage. Although the Commission should not preempt state regulation of PCS providers at this time, it should announce its intention to preempt any specific state regulatory regime that threatens to frustrate the announced federal policy of the rapid deployment of PCS.[22/]

A. The Commission Should Award Five Licenses, With an Allocation of 20 MHz Each, Per Geographic Area.

The proposal set forth herein differs from the Commission's tentative conclusions by suggesting that the Commission award more licenses per geographic area -- five as opposed to three -- and allocate less spectrum -- 20 MHz as opposed to 30 MHz -- per licensee. The total amount of

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22/ In this section of its comments, Rochester sets forth a licensing plan for broadband, licensed PCS operations in the 2 GHz portion of the spectrum. The Commission also proposes to reserve spectrum for unlicensed operations -- e.g., wireless PBXs and the like -- in the 2 GHz range and additional spectrum in the 900 MHz range for narrowband operations. Id., ¶ 49. Rochester has no objection to any of the alternatives that the Commission proposes for unlicensed and narrowband operations.

spectrum to be allocated under this proposal -- including spectrum reserved for narrowband and unlicensed operations -- is the same as that suggested by the Commission.

A cornerstone of the Commission's licensing proposal is to rely upon market forces and competition, rather than regulation, as the means to achieve the rapid deployment of PCS.[23/] Reliance upon market forces has worked well in the past -- e.g., cellular -- and the Commission correctly proposes to extend its procompetitive policies to its licensing plan for PCS. Rochester, however, believes that the Commission can best achieve this result by awarding more licenses per geographic area, but with less spectrum each, than proposed. Although three licensees per area would generate substantial competition among PCS licensees, the Commission's findings regarding the demand for PCS suggests that even more licensees could be accommodated.[24/] Moreover, increasing the number of licensees could well result in the availability of a wider variety of services and features to the public. Increased competition will also ensure that prices for PCS are reasonable. If, as Rochester believes, demand will accommodate five providers without requiring an increase in the amount of spectrum that

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23/ Id., ¶ 97.

24/ Id., ¶¶ 25-28.

the Commission must allocate for PCS, then the Commission should make provision for this demand.

The Commission may accomplish this result, without requiring an additional spectrum allocation, by allocating 20 MHz rather than 30 MHz per licensee. This smaller allocation would recognize the essentially local nature of PCS.[25/] Microcell technology requires relatively low power and relatively small coverage areas per cell. A 20 MHz allocation should be sufficient for a licensee to offer its services efficiently. In addition, as the service matures, providers will have every incentive to utilize spectrum more efficiently, thereby resulting in the more effective use of a limited resource.

Currently, the Commission allocates 25 MHz of spectrum to each cellular licensee. The coverage areas necessary for viable cellular systems are probably larger than those that will be necessary to support discrete PCS systems. Thus, the allocation of slightly less spectrum for a PCS licensee than

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25/ Rochester recognizes the importance to PCS users of being able to communicate with anyone, regardless of location. This, however, is a more a matter of interconnection than it is of the amount of spectrum allocated or the geographic scope of a particular license. See also Sections II.B & IV, infra.

currently allocated for a cellular licensee should be sufficient.[26/]

B. The Commission Should Define the Geographic Scope of PCS Licenses as Coterminous With the Cellular MSAs and RSAs.

The Commission has tentatively concluded that it should not define the geographic scope of PCS licenses with respect to the cellular MSAs or RSAs. Rather, it requests comment on whether it should utilize the telephone LATAs or the Rand-McNally MTAs or BTAs and whether it should award some PCS licenses on a nationwide basis.[27/] The Commission apparently believes that the MSA/RSA definitions would produce PCS coverage areas that are too small.

PCS operations, however, are likely to be inherently local -- much as landline exchange service is local -- in nature. Defining the geographic scope of a PCS license should take this fact into account. The Rand-McNally MTAs and BTAs are both simply too large for this purpose. For example, the MTA in which Rochester is included also includes Buffalo. The Rochester BTA is also larger than the Rochester MSA.

26/ As one alternative, the Commission has proposed permitting exchange carriers to acquire up to 10 MHz of spectrum to provide PCS within their service territories. NPRM, ¶¶ 77-79. As Rochester demonstrated in Section I, supra, the Commission should not disqualify exchange carriers or cellular providers from holding PCS licenses. If the Commission adopts this suggestion, such action would render this proposal moot.

27/ Id., ¶ 60.

The telephone LATAs, depending upon location, may either be too large or too small. Moreover, the LATAs were configured for an entirely different purpose -- to define interexchange services from which the Bell companies are barred under the Modification of Final Judgment.[28/] The LATAs, therefore, have little relevance to defining the appropriate serving areas for wireless services.

The closest geographic market definitions that currently exist that would be relevant to PCS are the cellular MSAs and RSAs. Cellular and PCS encompass a family of wireless services that are intended to satisfy the needs of the mobile public. While the MSAs and RSAs may not exactly match the needs of potential PCS providers or users, they best fit the essentially local nature of PCS.

In addition, the Commission can best facilitate competition among service providers by making PCS coverage areas coterminous with those for cellular. Such a licensing plan will facilitate competition between PCS and cellular providers and among PCS providers themselves by forcing them to compete on the basis of attributes -- price, service quality, new features and the like -- other than merely coverage area. This type of competition will produce the greatest consumer benefit.

28/ See United States v. Western Elec. Co., 569 F. Supp. 990, 994-95 (D.D.C. 1983).

For this reason as well, the Commission should decline to award nationwide PCS licenses, as it proposes.[29/] The existence of nationwide licensees would be anticompetitive, because it would permit such licensees possibly to differentiate themselves solely on the basis of coverage areas. Moreover, declining to award nationwide licenses would entail no consumer detriment. As is occurring in the cellular industry, providers will have every incentive to enter into roaming agreements, establish clearing houses and pursue inter-switch handoff capabilities. These efforts will result in the seamless coverage that customers will demand.

The Commission should utilize the existing geographic market definitions rather than incurring the time and expense of developing new ones.[30/]

29/ NPRM, ¶ 60.

30/ One justification advanced by the Commission in tentatively rejecting the use of the cellular MSAs and RSAs is the transaction costs that have been incurred in the consolidation in the ownership of cellular properties. Id., ¶ 57. The Commission has mistakenly characterized those transaction costs as the price paid for creating cellular territories that are too small. The consolidation occurring within the cellular industry, however, reflects the perceived value of those properties, rather than inadequate service territories. Moreover, the auction process suggested herein will permit some of that investment value to be returned to the taxpayers. Finally, Rochester notes that such transaction costs generally increase with the size of the acquisition. Thus, reducing the number of potential transactions by increasing the geographic scope of a PCS license will not necessarily result in a reduction in aggregate transaction costs.

C. The Commission Should Recognize the Common Carriage Nature of PCS.

The Commission requests comment on whether it should classify PCS as common or private carriage. In particular, it requests parties to address whether PCS falls within the definition of private carriage -- the absence of the resale of interconnected telephone service for profit.[31/] Under this definition -- as well as any common understanding of the common carriage concept -- licensed PCS operations are classic common carriage endeavors. In so defining PCS, however, the Commission should take care not to equate common carriage with state entry, exit and rate regulation. Although the common carriage classification carries with it the potential for state regulation, the Commission should not attempt to preempt state regulation. Such an attempt would likely fail to survive judicial scrutiny. At this time, the Commission should announce its intent to preempt specific state regulatory regimes that threaten to frustrate valid federal policy objectives.

31/ Id., ¶ 35.

Licensed[32/] PCS operations are -- or should be -- common carrier activities. PCS providers will -- or at least should -- hold themselves out to serve the public in general within the scope of their operations. Moreover, classifying PCS as common carriage will facilitate the offering of PCS to the widest possible audience. It will also facilitate the interconnection of PCS systems with each other and with networks provided by others, such as exchange and cellular carriers. A common carriage classification will, thus, promote one of the Commission's central policy objectives -- the broadest possible connectivity among PCS users and users of other communications networks. Incorrectly classifying licensed PCS operations as private carriage -- with no obligation to serve or interconnect -- could well result in islands of PCS networks, the users of which could reach no one else, save other residents of their own island.

Moreover, in terms of definition, licensed PCS operations cannot qualify as private carriage. As the Commission recognizes,[33/] PCS providers will wish to interconnect with

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32/ On the other hand, unlicensed operations -- such as wireless PBXs -- are more akin to customer premises equipment and should be treated as such. Narrowband applications may fall on one side of the fence or the other. The Commission should decide the regulatory classification of such services on a case-by-case basis.

33/ Id., ¶¶ 99-103.

other networks and will seek to resell interconnected telephone service for profit. Only in this way will PCS providers be able to offer the ubiquitous communications services that customers demand.

However, in classifying licensed PCS operations as common carriage endeavors, the Commission should unambiguously state that the common carriage status of PCS is not an invitation to state entry, exit and rate regulation. Some states have indicated a strong preference for a common carriage classification of PCS providers precisely so that they may be subject to state regulation.[34/] This Commission should disabuse any such notion.

Rochester does not suggest that the Commission preempt state regulation at this time. Under existing precedent, the Commission may only preempt specific state regulations that threaten to frustrate valid federal policy objectives. The Commission must also narrowly tailor any preemption order to achieve the above objective.[35/] At present, the courts would likely view any preemptive action as premature.

Rather than engage in a fruitless -- and possibly unnecessary -- battle with the states at this time, the

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34/ E.g., New York State Department of Public Service, Personal Communications Service at 39 (Oct. 1991).

35/ See NARUC, supra at 4 n.6.

Commission should announce its intent to preempt specific state regulatory actions where necessary to achieve valid federal policy objectives. The Commission should reaffirm its tentative conclusion that market forces and competition are the best means of achieving the widespread deployment of PCS and state that it stands ready to override state action inconsistent with this objective.

III. THE COMMISSION SHOULD ADOPT LICENSING PROCEDURES THAT ENSURE THE EXPEDITIOUS DELIVERY OF PCS TO THE PUBLIC.

In establishing licensing procedures for PCS providers, the Commission must develop rules in two broad areas: (1) procedures for awarding initial licenses; (2) rules governing post-award conduct. The NPRM largely focuses upon the first area of inquiry. The latter is also important and one to which the Commission should devote some attention.

With respect to initial applications, if Congress provides it with the authority, the Commission should utilize auctions in awarding initial licenses. Failing that, the Commission should adopt a comparative hearing procedure. Only as a last resort should the Commission conduct lotteries, and then only subject to strict financial and technical qualification criteria.

The Commission should design its oversight of activities subsequent to the award of initial licenses to ensure that licensees follow through on their promises -- and incur stiff penalties if they do not -- and to provide for the most